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Legal **DEPARTMENT**

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Subject:—

Opinions under the Bombay Primary Education Act, 1923.

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HMP.
4/5/56.

A
10/5
10/5

Submitted.

The question for the R.L.A's consideration is whether proviso to regulation 4 under heading "III-Conditions of Service" of the draft regulations proposed to be made by the Surat Borough Municipality under section 27A(3) of the Bombay Primary Act, 1923, is intra vires the Bombay Primary Education Act, 1923.

2. Sub-section (1) of sec. 27A of the Bombay Primary Education Act, 1925, provides that notwithstanding anything contained in the Act, the Provincial Government may, by notification in the Official Gazette, delegate to a local authority which is a Municipality constituted under the Bombay Municipal Boroughs Act, 1925, and the annual expenditure of which on primary education is not less than 100,000/- power to appoint an Administrative Officer. The Surat Borough Municipality is one of the local authority Municipalities to which the power to appoint Administrative Officer has been delegated. Sub-section (2) of sec.27A provides that the appointment or such Administrative Officer shall be made, after inviting and considering the suggestions, if any, of the School Board and with the previous approval of the Provincial Government. The substantive part of regulation 4 under "III-Conditions of Service" seeks to explicitly make clear the meaning of section 27A(2) and provides that the appointment of the Administrative Officer, whether permanent or acting shall be made by the Local Authority

after

after inviting and considering the suggestions, if any, of the School Board and ~~with~~ with the previous approval of Government. It is thus evident that the regulation contemplates that even for appointment of an "acting" administrative officer, the procedure prescribed by section 27A(2) should be followed. The proviso to regulation 4, however, in asmuch as it seeks to vest power in the Local Authority to make temporary arrangement for the performance and exercise of the Administrative Officer's powers and duties during his absence on leave or otherwise not exceeding four months, "without the previous approval of Govt." appears to be inconsistent with the main regulation and section 27A(2). The word "acting" in regulation 4 would include appointment of a person during the absence of the Administrative Officer on leave or otherwise. The proviso is, therefore, inconsistent with section 27(2) and first part of regulation 4.

Sd. E.P.Bhangara,
19/1.

HRP.
4/5/56.

Office of the R.L.A.

The proviso to Regulation 4 (at p.13 ante) does not appear to come within the purview of section 27A(3) of the Bombay Primary Education Act, 1923 inasmuch as it does not in any way regulate "the qualifications, pay and conditions of service" of the Administrative Officer. It only provides for power to make temporary arrangements (which need not necessarily involve the appointment of a substitute) for the proper performance and exercise of the Administrative Officer's duties and powers during his absence on leave or otherwise for a period no exceeding four months. Under the substantive part of this Regulation 4 -- as under section 27A(2) -- the appointment of the Administrative Officer is to be made with the previous approval of Government. The proviso in question is more in the nature of an implied or emergency proviso to section 27A(2) than a regulation under section 27A(3). The view taken by the General Department in paragraph 3 at page 21 ante that the proviso to regulation 4 will have to be omitted as being outside the scope of section 27A(3) -- appears to be correct.

P.N.Moos,
Remembrancer of Legal Affairs.

U.O.to L.D.,No.1458, dated the 18th February 1942.

MMP.
5/5/56.

Submitted.

Mr. Maranji Vasanji Naik, a teacher under the control of the Surat Borough Municipality, instituted a suit (Civil Suit No. 306 of 1934) in the Court of the First Class Sub-Judge, Surat, against the S.of S. for India in Council and the Surat Borough Municipality and prayed for a declaration that the Committee of Management had no power to modify the scales and abolish the duty allowance and that the sanction granted by the Local Govt. for the modification of the rules regarding the scale of the salaries and duty allowances and abolition of the duty allowance granted to the plaintiff was improper, illegal and ultra vires, and that the plaintiff was entitled to the duty allowance according to the old scale. The suit was, however, dismissed with costs. The plaintiff thereupon preferred an appeal (First Appeal No.13/1937) in the Court of the District Judge, Surat. As this appeal was also dismissed, the plaintiff filed a Second Appeal (No.102 of 1938) in the High Court, Bombay, against the decision of the District Judge, Surat.

3. In its Interlocutory Order dated 6-3-1940, the High Court observed that from the recitals made in G.R. G.D./No.S-72(35), dated 11-8-1931 it is clear that Govt. no doubt approved the proposal of the Committee of Management to discontinue, with effect from 1-3-1931, the payment of the Head Master's and First Assistant's allowances to the primary school teachers under the Municipality subject to the

conditions laid down in G.R. E.D. No.6-72, dated 12-11-1930, but that there is nothing to show that the Committee, after it obtained the sanction of Govt., ever considered the matter at its meeting and decided to reduce the allowance or discontinue the same as sanctioned by Govt. The M.C., therefore, concluded that though the Committee of Management had power to discontinue the plaintiff's allowance, the Municipality failed to prove that the power was ever exercised in the terms of the provisions of section 8 of the Bombay Primary Education Act, 1923, and held that the plaintiff's right to duty allowance, which subsisted on 1-3-1931, was not validly taken away. As the parties were not able to agree as to the amount due to the plaintiff, the M.C., sent the issue to the lower Court to determine the amount that was due to the plaintiff, limited to the date of the Judgment, on the basis of the declaration.

3. From the Final Judgment of the M.C., dated 6-6-1941, it would be noticed that the amount of allowance found due upto the date of the suit was determined at Rs.823-8-4. The Court decreed this amount with interest at 6 p.c. after the date of the suit. The plaintiff was also awarded costs of the suit throughout.

4. The said Mr.Naik has now given notice of suit claiming Rs.2040 as duty allowance with effect from 6-6-1934 upto 5-6-1941, the date of his retirement from service. For the reasons stated in the E.D. office note dated 20-12-41, it holds that the allowance were legally abolished and consequently Mr. Naik is not entitled to the Head Master's allowance as claimed by him. The M.L.A. is

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5/8/56.

requested to advise if the E.D. office view is correct.

5. In G.R. E.D. No.S-72, dated 12-11-30 Govt. announced that they would raise no objections if any local authority wished to withdraw the Head Masters' and First Assistants' allowances after 1-12-1930. In pursuance of these orders, the Committee of Management, which functioned during the period of supersession of the Surat Borough Municipality, decided to discontinue the payment of the Head Masters' and First Assistants' allowances to primary teachers under the Municipality with effect from 1-3-1931. By G.R. E.D. No.S-72(35), dated 11-6-1931, Govt. approved the proposal of the Committee to discontinue the said allowances with effect from 1-3-1931, subject to the conditions laid down in G.R. E.D. No.S-72, dated 12-11-1930. As pointed out in para.2 above, the technical ground on which the Second Appeal No.102/1939 was decreed in favour of Mr. Naik was that after obtaining the sanction of Govt. to discontinuance of the allowance in terms of G.R. E.D. No.S-72(35), dated 11-6-1931 with effect from 1-3-1931, the Committee of Management did not pass a formal resolution deciding to discontinue the said allowances as sanctioned by Govt. The E.D. office, however, states that this argument would no longer hold good as the Surat Municipality adopted by its resolution No.22, dated 11-8-1932 the scales of pay sanctioned by Govt. in G.R. E.D. No.S-72(35) dated 27-8-1932.

6. G.R. E.D. No.S-72 (35), dated 27-6-1932 however reads thus:-

"In modification of the orders issued in G.R. E.D. No.S-72(35), dated 3-11-1931, Govt. are pleased to accord sanction to the adoption by the Surat Municipality of the following scales of pay for its primary teachers including those taken over under section 8(1) of the Bombay Primary Education Act, 1923, without the Head Masters' and First Assistants' allowances which have already been discontinued with effect from 1-8-1931 etc."

It is clear that the superseded G.R. E.D. No.S-72(35), dated 3-11-31 and the G.R. dated 27-6-32 determined merely the scales of pay and required the Municipality to adopt the same. The words underlined clearly denote that it has no bearing whatsoever on the question of the Head Masters' and First Assistants' allowances which were allowed to be discontinued under G.R. E.D. No.S-72(35), dated 11-6-1931. In its resolution No.21, dated 11-8-1932, the Municipality resolved that G.R. E.D. No.S-72(35), dated 27-6-1932 may be noted and the School Board be requested to give effect to it from 27-6-1932, the date of that G.R. No reference is made in the said resolution of the Municipality to G.R. E.D.No.S-72(35), dated 11-6-1931 (by which Govt. accorded sanction to the Municipality to discontinue the allowances) and consequently it cannot be said that a formal resolution was passed by the

MDP.
5/5/56.

Municipality deciding to discontinue the allowances on the lines of G.R. E.D. No.S-72(35) dated 11-6-31. It cannot, therefore, be said that the allowances were legally discontinued by the Municipality in pursuance of its resolution No.21, date 11-8-32.

7. Attention is, however, invited to the resolution of the Municipality No.6,dated 27-1-40 in which the Municipality resolved that "the duty or attendance allowance stands discontinued with effect from 30-3-1931 and under any event from 11-6-1931 and is discontinued." By this resolution, in view of the interlocutory order of the H.C.,Bombay, the Municipality appears to have confirmed and adopted with retrospective effect the order of Govt. issued under section 8(2)(b) of the Bombay Primary Education Act, 1923. Whether such a resolution will achieve the object in view especially in the case of vested rights likely to be prejudicially affected by it is a question not free from doubt and it should be left for decision of the Court (vide para.3 of H.L.A's opinion No.1832, dated 10-2-41).

Sd. D.P.Dhangara

21/1

G. A. S.

It is no doubt true that in the second appeal No.102 of 1938 the G.R.(E.D.) No.S-72(35) dated 27-6-1932 and the Surat

Municipality's resolution No.21 dated 11-8-1932 desiring the School Board to give effect thereto were not brought to the notice of the High Court and consequently the legal effect thereof was not considered by the High Court; but it appears difficult to say that the aforesaid G.R. and the resolution of the Municipality have the effect of validity abolishing the Head Masters' and First Assistants' allowances with effect from 1-3-1931.

G.R.(E.D.) No.S-72(35) dated 27-6-1932 read thus:-

"In modification of the orders issued in G.R.,E.D. No.S-72(35) dated 3-11-1931 Govt. are pleased to accord sanction to the adoption by the Surat Municipality of the following scales of pay for its primary teachers including those taken over under sec.8(1) of the Bombay Primary Education Act, 1923 without the Headmasters' and First Assistants' allowances which have already been discontinued with effect from 1-3-1931 (as sanctioned by G.R. (E.D.) No.S-72(35) dated 11-6-1931".

A perusal of G.R.(E.D.) No.S-72(35) dated 27-6-1932 and G.R.(E.D.) No.S-72(35) dated 3-11-1931 will clearly show that they determined merely the scales of pay and had nothing to do with the allowances. The recital "without the Headmasters' and First Assistants' allowances etc." in the G. R. of 1932 was

incidental with a view to distinguish pay from allowances. The resolution of the Surat Municipality dated 11-8-1932 could not have the effect of abolishing the allowances with the sanction of Govt. since as specifically stated in the G.R. of 1932 and according to the contention of the Municipality those allowances were already abolished with effect from 1-3-1931 with the sanction of Govt. under G.R.(E.D.) No.3-72(35) dated 11-6-1931. The High Court has already held in the second Appeal No.102 of 1938 that the Surat Municipality did not validly abolish the allowances since there was nothing to show that the Municipality considered the matter after the sanction was accorded by Govt. under G.R. dated 11-6-1931. The Municipality's resolution dated 11-8-1932 which states that the School Board should be requested to give effect to G.R.(E.D.) No.3-72(35) dated 27-6-1932 from 27-6-1932 does not expressly or by implication show any action on its part to abolish the allowances, the sanction of Govt. for the abolition of which was already obtained. What the Municipality intended by the resolution was the adoption of the scales of pay as sanctioned by G.R.(E.D.) No.3-72(35) dated 27-6-1932 and not the abolition of the allowances the impression of the Municipality and Govt. being that allowances were already abolished. Moreover, the High Court has already granted in the second Appeal No.102 of 1938 the claim of Mr.Naik up to the date of institution of the suit i.e.till 1934, which means the rejection of the present contention of the Municipality tha

that the allowances were abolished with effect from 1932. In these circumstances it is very doubtful if the contention of the Municipality that is resolution dated 11-8-1932 read with G.R. (E.D.) No.S.72(35) dated 27-6-1932 had the effect of abolishing the allowances would be tenable in a court of law.

It is true that by way of an extra precaution the Surat Municipality has passed a resolution on 27-4-1940 abolishing the allowances with retrospective effect from 30-3-1931 and under any event from 11-6-1931. Whether such a resolution will achieve the object in view especially in the case of vested rights likely to be prejudicially affected by it is a question not free from doubt (See R.L.A's opinion No.1232 dated 10-2-1941).

Mr. Naik now claims Rs.2049 as duty allowance with effect from 6-8-1934 up to 8-6-1941. I think Art. 102 of the Limitation Act applies and Mr. Naik will at least be entitled to claim the allowances due within three years from the date of accrual. Consequently he cannot claim allowances due to him for the years from 1934 to 1938. In view of legal position being doubtful as stated above and in view of the liability of the Municipality to pay at least the allowances due within three years from the date of accrual Mr.Naik's claim for Rs.2049 should not be conceded. The threatened suit, if filed, may be defended in due course.

Id. R.T.K. 29/1

D.S.

I agree with the view of S.A.S.

Id. V.M.S. 6/2/42.

R.L.A. I concur. Id. P.M.M. 18/2.

MRP. 5/5/56.

U.M.to E.D.No.1532 dated 20-2-42.

Office of the R.L.A.

Section 25 of the Bombay Primary Education (Amendment) Act, 1938 provides:

> "Notwithstanding any law or terms of any contract, all School Board Administrative Officers employed by local authorities to which the power of appointing administrative officer is not delegated under section 27A of the said Act and all supervisors who may be in office on the day on which this Act comes into force shall from such date, be deemed to be appointed as Administrative Officers and officers of the Inspecting staff under section 9A of the said Act as the case may be on such terms and conditions as may be determined by the Provincial Government."

It is therefore clear from these provisions that it would be competent to Government to determine the terms and conditions on which the Administrative Officers and the Supervisors taken over would be employed. By G.R.(E.D.) No.3-78, dated the 5th December 1938 Government by virtue of powers vested under section 25 of the Bombay Primary Education (Amendment) Act,1938 determined the pay of the non-matriculate supervisors in the revised scale of Rs.40-5-100. Consequently the reduction in the scale of pay of Mr.Kale, a non-matriculate supervisor from Rs.60-4-120 to Rs.40-5-100 per month was lawful. This reduction in the scale of pay has not been made retrospectively but prospectively from the date of the G.R.(E.D.) No.3-78, dated the 5th December 1938. The mere fact that Mr. Kale was actually given intimation of the orders of Government contained in that G.R. later on and that he had been provisionally paid at a higher rate from 1st July 1938 to 4th December 1938 would not entitle Mr. Kale to claim the old scale of pay till the date of such intimation. Consequently Mr.Kale's contentions that Government had no right to reduce the scale of pay on which he had been employed while he was in the service of the local authority and that he was entitled to draw his pay in that scale till he was actually informed of the reduction in the scale of pay are without any substance. The threatened suit

if filed would be defensible.

Sd. P.T.Moos
6/3
Remembrancer of Legal Affairs.

U.R.to D.D.,No.2030, dated the 9th March 1942.

MRP.
5/5/56.

The present difficulty is apparently due to the substitution of 'village panchayat' for 'School Board' in Rule 95-A (see para.3 at p.254 and the correction at p.265 of E.D.File No.S.96 II F.Dr. 1939) without any corresponding or consequential change in Rule 123(4) whereby the provisions in rules 95-A to 103 are made applicable to School Committee appointed by a non-local authority municipality under rule 123(1). Although the question is not entirely free from doubt the view taken by the Director of Public Instruction and concurred in by General Department appears to be be the better view. This view, however, impliedly imports the expression "mutatis mutandis" in Rule 123(4). In order to avoid any cause for misunderstanding and to prevent the intention being frustrated by a contrary interpretation as urged by the President, Umreth Municipality, it would be advisable to accept the suggestions of the Director of Public Instruction in para.3 of his letter under reference. The addition suggested in para.4 at p.10 ante will not be suitable or sufficient to achieve the object in view viz. to apply Rules 95-A, 95-B and 95-C to non-local authority Municipal Schools Boards.

Sd. P.N.Moos,
27/3.
Remembrancer of Legal Affairs.

U.R.to E.D.,No.2328, dated the 31st March 1942.

HMP.
5/5/56.

Office of the R.L.A.

The school building, after transfer by the Mahad Municipality, has vested in the District Local Board, Kolaba under section 6(1) of the Bombay Primary Education Act, 1923. Consequently, even though the building has ceased to be used for purposes of primary education, it does not revert to the Mahad Municipality (cf. the decision of the Bombay High Court in Second Appeal No.59 of 1940). It will not be correct to say that merely because the particular building or property transferred under s ub-section (1) of section 6 is no longer required for the use for which it was being used prior to such transfer, that building or property ought to be re-transferred. Retransfers are governed by the provisions of section 6(2) which has no application in the present case. The school building is now the property of the District Local Board. Since the District Local Board does not desire to spend anything towards its upkeep from its primary education fund and as it is no longer used for the purpose of a school, the proper course would be to lease it out to the Municipality at a nominal rent with the Commissioner's sanction, if necessary, under section 47 of the Bombay Local Boards Act, 1923.

2. The attention of E.D. is once again drawn to rule 104 of the Secretariat Instructions under which such references can be made only by the Secretary or Deputy Secretary.

Sd. P.N.Moos
8/4
Remembrancer of Legal Affairs.

M.R.to E.D.,No.3067, dated the 9th April 1942.

MRP.
5/5/56.

Submitted.

In his letter No.S-99/363 dated 15-12-41 the D.P.I. states that under clause (d) of Sub-rule (1) of rule 41 of the Bombay Primary Education Rules, 1924, the Administrative Officer is empowered to suspend a primary teacher and as under rule 151 of the B.C.S.R. it is competent for the suspending authority to grant subsistence grant, it is the A.O. and not the School Board that is competent to grant subsistence grant to primary education teachers. He, therefore, contends that inasmuch as rule 20 of Schedule M of the Bombay Primary Education Rules empowers the School Board to grant subsistence allowances, it is inconsistent with rule 41(1)(d) and it should, therefore, be deleted. The question for the R.L.A's consideration is whether rule 20(1) of Schedule M is inconsistent with rules 41(1)(d) and 46 of the Bombay Primary Education Rules, 1924.

2. Section 4(2) of the Bombay Primary Education Act, 1923, provides that the School Board shall exercise the powers and perform the duties of the local authority in respect of primary education as may be prescribed. The word "prescribed" as defined in section 2(11) of the Act means prescribed by rules made by the Provincial Government for the purposes of the Act. Rule 4(2) of the Bombay Primary Education Rules, 1924, provides that all officers, teachers, clerks etc. employed by the local authority under sub-rule (1) shall be appointed by the School Board, and shall be under the control of, and be subject to the orders of, the School Board,

except

except in so far as the powers of the School Board have been limited by the Act or by rules framed under the Act. Under clauses (a) and (c) of rule 34, subject to the rules and to the regulations made by the local authority under section 27(3)(d) of the Act, the School Board has power to appoint, remove or dismiss any attendance officer, supervisor or clerk. Under clause (b) of sub-rule (1) of rule 41, the A.O. has the power to appoint, promote, transfer, remove or dismiss any teacher, while under clause (d) the power to censure, fine, reduce or suspend any teacher is specifically conferred upon the A.O. It is thus clear that the power to suspend any teacher is conferred upon the Administrative Officer, and to this extend the power of the Sschool Board under rule 4(2) is limited.

3. Rule 20(1) of Schedule M provides that no officer or servant of a School Board, who has been convicted and sentenced by criminal Court to imprisonment for any offence committed by such officer or servant while on duty or on leave, shall be allowed while in jail to draw any pay or allowance from the School Board. The proviso further recites that the School Board may, if it so decides, pay him a subsistence allowances from the date of his apprehension to the date of his conviction on the analogy of rule 156 of the B.C.S.R. Rule 156 of B.C.S.R. provide thus:-

"A Government servant committed to prison ..... should be considered as under suspension from the date of his arrest and therefore entitled only to the payment specified in Rule 151 until the termination of the proceedings against him, when, if he is not removed or dismissed from service, an adjustment of his

MRP.
7/3/56.

pay and allowances should be made according to the conditions and terms prescribed in rule 152 etc."

Under rule 151(b) of B.C.S.R. a Government servant (other than a military officer) under suspension is entitled to a subsistence grant at such rates as the suspending authority may direct, but not exceeding one fourth of the pay of the suspended Govt. servant. Under rule 151(b) it is the suspending authority that is competent to grant subsistence grant at such rates as may be fixed by it not exceeding the maximum prescribed. As under rule 41(1)(d) of the Bombay Primary Education Rules 1924, the power of suspending a teacher is conferred upon the Administrative Officer, under the proviso to rule 20(1) of Schedule M read with rules 151(b) and 156 of B.C.S.R. the authority competent to grant subsistence allowance would be the Administrative Officer and not the School Board. Apparently, therefore, there appears some inconsistency between rule 41(1)(d) and proviso to rule 20(1) of Schedule M. However, these rules have to be read together and construed so as to produce the greatest harmony and the least inconsistence. As pointed out in R.L.A's opinion No.3858 dated 30-4-1941, it will be noticed that the words "officer or servant" in rule 20(1) of Schedule M mean "officer or servant" other than a "teacher" falling under rule 41(1)(d) of the Bombay Primary Education Rules. In light of this interpretation, the School Board can have no power to grant subsistence allowance to a teacher under proviso to rule 20(1) of Schedule M.

Sd. E.P.Bhangare
17/3. A.S.

P.T.O.

The question for the consideration of the H.L.A. is whether the proviso to rule 20(1) in Schedule M to the Primary Education Rules, 1924 in inconsistent with rules 41(1)(d) and 46 of the Primary Education Rules.

The proviso to rule 20(1) in Schedule M to the P.E. Rules, 1924 provides that the School Board may if it so decides pay to an officer or servant of the School Board who has been convicted and sentenced by a criminal court to imprisonment for any offence committed by such officer or servant while on duty or on leave a subsistence allowance from the date of his apprehension to the date of his conviction on the analogy of rule 156 of the Bombay Civil Service Rule. That rule of the B.C.S.R. provides:

"A Government servant committed to prison either for debts or on a criminal charge should be considered as under suspension from the date of his arrest and therefore entitled only to the payment specified in rule 151 until the termination of the proceedings against him, when, if he is not removed or dismissed from service, an adjustment of his pay and allowances should be made according to the conditions and terms prescribed in rule 152. Under rule 151(b) a subsistence allowance can be granted at such rates as the suspending authority may direct, but not exceeding one-fourthx of the pay of the suspended Govt. servant. If the proviso to rule 20(1) in Schedule M to P.E.Rules is read with rules 151(b) and 156 of the B.C.S.R. it will be clear that the School Board is entitled to grant a subsistence allowance not exceeding one-fourth of the pay of its suspended servant. The words "on the analogy of rule 156 of B.C.S.Rule" in the proviso rule 20(1) in the Schedule M to P.E.Rules clearly show that the provisions of rule 156 of B.C.S.R. will apply only in so far as they are

applicable . Since the power to grant the subsistence allowance vests specifically in the School Board, rule 151(b) of the B.C.S.R. though referred to in rule 156 will have ~~mk~~ no application in the case of officers and servants of a School Board, who have been apprehended, in so far as it relates to the power of the suspending authority to grant a subsistence allowance; but it applies in so far as it relates to the rates of payment specified therein as is clearly stated in rule 156. It is no doubt true that the power to suspend a teacher vests in the ~~Ad~~Administrative Officer under Rule 41(1)(d) of the P.E.Rules; but that power does not necessarily include the power to grant a subsistence allowance during the period of suspension, particularly when such power vests specifically in the School Board under the proviso to rule 20(1) in Schedule M to the P.E.Rules. Under rule 46 in the absence of regulations framed by a local authority with the sanction of Government joining time pay, officiating pay and travelling and other allowances shall be paid etc. in accordance with the rules prescribed from time to time by Government for similar classes of its employees. "Other allowances" will include subsistence allowance. It follows from rule 46 that where a local authority has not framed regulations with the sanction of Government an officer or a servant of the School Board under suspension would be entitled to the subsistence allowance as prescribed under the B.C.S.R., but it does not follow that the authority corresponding to the one in whom the power to grant a subsistence allowance vests under the B.C.S.R. must necessarily

be

be entitled to grant such allowance to an officer or servant of the School Board under suspension particularly when a different specific provision is made in this behalf in the proviso to rule 20(1) in Schedule M to the P.E.Rules vesting such power in the School Board. Consequently the proviso to rule ~~2~~ 20(1) in Schedule M to the P.E.Rules is in no way inconsistent with rules 41(1)(d) and 46 of the P.E. Rules. The view taken by the D.P.I. in his letter at p.1 and in para.2 at p.5 ante does not appear to be correct.

Id. R.T.K.
18/3.

D.S.

I agree with the view taken by A.S.

Rules 46,41 (d) and 47-A read with rule 20 in Sch.M must be read together and construed so as to harmonise with each other as much as possible. The B.C.S.R. do not in terms apply to the employees of the local authority. Hence there can be no question of B.C.S.R.151 nullifying or overriding Rule 20 in Sch.M. on the ground of inconsistency inasmuch as under the latter rule the power of granting a subsistence allowance actually vests in the School Board whereas on the analogy of B.C.S.R.151, in view of the power to suspend teachers, clerks or inferior servants under P.E.R.41(1)(d), the power to grant a subsistence allowance should also have vested in the Administrative Officer.

Perhaps the papers may be seen and returned with the remarks that the view taken in para.2 of the G.D. office note at pp.7-8 ante is correct; there is no necessary inconsistency between P.E.R.41(1)(d) and Rule 20 in Sch. M to the .E.Rs.

In the alternative the fuller reply as in the note of A.S. above may be sent to G.D. provided of

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of course the R.L.A. agrees with the view taken by A.S. and by me

Id. V.N.S.

R.L.A.

Reply in terms of A.S's note with which I agree.

Id. P.N.M.
4/4

Reply issued as per full note of S.A.S. dated 18-3

U.R.to E.D.No.3150, dated 11-4-42.

MRP.
7/5/56.

Office of the R.L.A.

It appears that the questions raised in this file are —

(1) whether rule 58-A(1) read with rule 41(1)(h) of the Bombay Primary Education Rules, 1924, contemplates prior consent of the local authority to deputing teachers selected for training by the Administrative Officer, and

(2) if so, whether in the absence of any resolution of a local authority not to depute any teachers for training in any year the teachers selected for training by the Educational Inspector in that year can be said to be teachers sent by the local authority within the meaning or rule 58-A(1).

Under rule 6 of the Bombay Primary Education Rules, 1924, it is obligatory on a local authority to make adequate arrangements for the supply of a sufficient number of trained teachers. Rule 58 provides that for the purpose of rule 6, of the teachers employed by a local authority not less than 75 per cent. or such other proportion as may from time to time be fixed by Government shall be trained teachers. If these provisions are read together it will be clear that a local authority is bound to depute a certain number of teachers every year for training until the 75 per cent. limit or such other proportion as may from time to time be fixed by Government is reached and for that purpose the local authority will have to see that due provision is made in the budget of the school board submitted to it under rule 140. If a provision is made in the budget of a school board for any particular financial year, say for instance for the year 1942-43 for training a certain number of teachers, and is passed under rule 140, the local authority will be deemed to have consented to depute that number of teachers for training in that year i.e. 1942-43. It would then be for the Administrative Officer to recommend a sufficient number of teachers under rule 41(1)(h) so that the Educational Inspector may select out of them a number of suitable teachers for training equal to or less than the number of teachers provided for in the budget of the school board. The teachers thus selected by the Educational Inspector would be

P.T.O.

teachers sent for training by the local authority in that year within the meaning of rule 58-A(1). When provision is made in the budget for sending teachers for training, no separate resolution ~~is~~ of the local authority would, it seems, be necessary to signify its consent to the training of the teachers selected by the Educational Inspector, since neither the local authority nor the school board has any authority to recommend or select the teachers for training. In such a case the Administrative Officer would be quite competent to depute the teachers selected by the Educational Inspector for training (see R.L.A's No.128 dated 5-1-1940). If, however, no provision is made in the budget for the training of any teachers or if after having made such provision the local authority validly cancels it before the teachers selected by the Educational Inspector are actually deputed, no deputation of teachers for training would be competent. In such an event, if rule 58 read with rule 6 has not been complied with, action would be competent under section 26A of the Bombay Primary Education Act, 1923.

Sd. P.N.Moos
13/4
Remembrancer of Legal Affairs.

U.R.to E.D.,No.3222, dated the 14th April 1942.

MRP.
7/5/56.

Office of the R.L.A.

It appears that the District Local Board, Kaira took over the control of primary education in June 1933. Till then the control had vested in Government. In 1931 Government had discontinued temporarily the Head Masters' and 1st Assistants' allowances; But pension contribution on the allowances was being credited to the accounts of the teachers concerned. After assuming control the District Local Board, Kaira took no steps to alter the position i.e. the temporary retrenchment of the Head Masters' and 1st Assistants' allowances and the payment of pension contribution on the allowances was continued. By G.R. E.D. No.P-99, dated the 4th October 1938 Government declared that it was not in favour of local authorities restoring the Head Masters' and 1st Assistants' allowances in cases where they had already been discontinued with the requisite sanction and that the local authorities who had not yet discontinued such allowances should submit proposals for their stoppage as early as possible. As these orders caused a good deal of discontent amongst the teachers Government appointed a Committee known as the Moos-Paranjape Committee to enquire into the question of pay and allowances of teachers. The Committee's main recommendations in regard to the payment of the Head Masters' and 1st Assistants' allowances were as follows:-

Recommendation No.1. -- Teachers actually in receipt of allowances or in whose cases the allowances were temporarily retrenched should be allowed to draw the allowances amount from 1st April 1939 etc.

Recommendation No.2. -- Pension contribution and Provident Fund contribution should continue to be paid on the amount of the allowance to be treated as personal pay and the Local Authorities that discontinued the

allowances in 1938 as a result of the orders of 1933 should consider the advisability of paying these allowances for the intervening period etc.

Government was pleased to accept the recommendation No.1 and the Director of Public Instruction was requested to advise the Local Authorities which discontinued the allowances as a result of the Government orders of 1938 to give effect to the measure immediately. Government was also pleased to accept the first part of the recommendation No.2. viz. that the pension contribution and provident fund contribution should continue to be paid ~~on~~ on the amount of allowance to be treated as personal pay (See G.R. E.D. No.S-72, dated 18-10-1939).

Relying upon the G.R. E.D.No.P.99 dated 4-10-1938 the Kaira local authority permanently abolished the allowances, but no sanction of Government for the same was obtained. It did not however sanction payment of personal pay under G.R. E.D. No.S-72, dated 18-10-1939, but has been paying since then pension contribution on the personal pay under that G.R.

Diwan Bahadur C.M. Gandhi on behalf of 231 teachers serving under the Kaira local authority has given notice of a suit claiming personal pay with effect from 6th April 1939 under G.R. E.D.No.S.72, dated 18-10-1939. The questions raised for the consideration of the R.L.A. are:-

(1) Whether the orders contained in G.R. E.D. No. S 72, dated 18-10-1939 are mandatory, and if not, whether the threatened suit if filed can be defended; and

(2) Whether there is any objection to agreeing to the proposal made in para 9 of the notice at page 1 ante i.e. to the institution of one suit as a test case so that the claims of the other teachers should abide by the result thereof.

Question No.1. -- The effect of G.R. E.D. No.S-72,

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9/5

dated 18-10-1939 was considered by the R.L.A. in his opinion No.3417, dated 17th/18th April 1941 where it was observed: "The orders in G.R. E.D. No.S-72, dated 18-10-1939 clearly show that what was to be done thereunder in conformity with recommendation No.1 of the Committee therein set out was not the restoration of the Head Masters' and 1st Assistants' allowances but that certain teachers who had been adversely affected by the discontinuance of these allowances were to be allowed as a special case to draw the allowance amount as personal pay to be merged in future increment if any. There is no statutory provision protecting such personal pay either under the Primary Education Act or under the Primary Education Rules. Nor is there any provision requiring a local authority to obtain the sanction of the Provincial Government for discontinuing either temporarily or permanently these discretionary additions to the lawful amounts payable under the ordinary scales or rules of pay applicable. It does not appear that G.R. E.D. No.S-72, dated 18-10-1939 actually revived the discontinued allowances. That G.R. did not impose any obligation upon the local authorities to grant personal pay. The object seems to have been to express Government's approval to the grant of personal pay if the local authority so decides and to the proportionate increase in the grant-in-aid for covering extra cost which the local authority would have to meet in that connection."

It is, therefore, clear that the G.R.,E.D. No.S-72, dated 18-10-39 imposed no obligation on the Kaira local authority to grant personal pay in lieu of allowances which were either temporarily or permanently abolished. The allowances were already temporarily abolished by Government prior to the Kaira local authority taking over the control of primary education. No sanction of Government was required to continuing

the temporary abolition of these allowances under the proviso (b) to section 8(2) of the Bombay Primary Education Act. The Kaira local authority did not resolve to pay personal pay to the teachers concerned under the G.R. E.D. No.3-72, dated 18-10-39. Consequently these teachers can have no right to claim the personal pay under that G.R. The question whether the permanent abolition of the allowances without the previous sanction of Government and the payment of pension contribution on the personal pay instead of on the allowances are lawful would be another matter which has nothing to do with the present claim of teachers. The suits if filed would be defensible.

Question No.2. — There is no objection to Government agreeing to the proposal made in para 9 of notice of filing one suit as a test case. It would obviously be convenient to do so, as otherwise it would be unfair to the teachers. Further if there did happen to be a multitude of suits, and they went against Government, Government would be in a good position regarding costs if they could point out they had agreed to a single representative suit.

Sd. P.N.Moos
17/4
Remembrancer of Legal Affairs.

U.R.to E.D. No.3337, dated the 17th April 1942.

MRP.
7/5/56.

Office of the R.L.A.

In ~~1942~~ 1941, several primary school teachers employed under Kolaba District Local Board were sent for training. The position then was that they had a right to be paid a stipend by Government. It was not necessary for the Local Board to make any budget provision and they did not do so. On 22-11-1941, after the teachers were sent rule 58-A of the Bombay Primary Education Rules was promulgated. That rule reads as follows:-

"58-A. Payment of duty pay to teachers under training:-

(1) Every teacher who is sent for training by a local authority shall, if he holds a permanent appointment, be paid by the local authority his grade pay for the whole of the period of his training and he shall be considered as on duty for purposes of leave, pension and increments.

(2) The provisions of sub-rule (1) shall have effect from 1st June 1941."

The local Board were asked to make budget provision for payment of duty pay. They however passed a resultion refusing to do so on the ~~x~~ ground that it was not the Local Board which had sent the teachers for training in 1941-42. The questions raised for the consideration of the R.L.A. are:-

(1) Whether the Local Authority is liable to pay these teachers duty pay under rule 58-A.

(2) If so, what action should be taken by Government to enforce payment.

2. The R.L.A. in his opinion No.3222 dated 14th April 1943 has already expressed the opinion that if a local authority makes budget provision for the training of teachers, it will be deemed to have consented to depute those teachers for training. In the present case, the Kolaba District Local Board as the Local Authority did not make any budget provision and at the time the teachers were sent there was no necessity for the Local Authority to make such provision. The question therefore arises whether the Local Board can be said to have sent the teachers. The duties of

a Local Board in regard to the sending of teachers are prescribed at present by Rule 6 and rule 58-A of the Bombay Primary Education Rules. Rule 6 originally read as follows:

> "6. A local authority shall make adequate arrangements for the supply of a sufficient number of trained teachers by the award of stipends tenable at a Government training institution or otherwise."

The words "by the award of stipends tenable at a Government training institution or otherwise" were afterwards deleted and rule 58-A was added. Therefore, at present, rule 6 reads as follows:-

> "6. A local authority shall make adequate arrangements for the supply of a sufficient number of trained teachers."

What arrangements the Local authority have to make, are nowhere prescribed. They are neither to recommend nor to select the teachers. These are duties imposed upon the Administrative Officer and the Educational Inspector. For some years before the promulgation of rule 58-A, Government had been paying the stipends to the teachers and the Local Authority did not require to make any budget provision. The sending of teachers seems to have been purely and executive matter, not requiring any budget provision or formal resolution on the part of the Local Authority. In this case, the argument of the Local Board is that they did not send the teachers for 1941-42 and therefore they are not liable under rule 58-A for the duty pay. But rule 58-A does not specifically lay down that the Local Authority shall send the teachers. The word "sent" occurs incidentally in that rule: "Every teacher who is sent for training by a local authority shall,...." Rule 58-A imposes upon the Local Authority the duty of paying, not the duty of sending. Further there is no sanction of the Bombay Primary Education Act or no rule thereunder which does specifically impose upon the Local Authority the duty of sending or deputing. The word "depute"

occurs in rule 54(4). But there again, it is incidental. If the Local Authority had to make budget provision for the teachers who were sent, it might be said that the Local Authority in that sense sent the teachers. But, in the present case, the Local Authority was not under the necessity of making budget provision or of doing anything specific. For such circumstances, the words "sent by the Local Authority" appear inaccurate. It would be more accurate to say "sent on behalf of the Local Authority". These are indeed the words used in rule 56-A: "Every temporary teacher or cadidate sent for training on behalf of any local authority shall ....." Therefore, the Kolaba Local Board's argument that they did not send these teachers is beside the point. These teachers were sent not by the Local Authority, but on behalf of the Local Authority and rule 56-A imposed upon the Local Authority the duty not of sending but of paying for them. In the absence of any section of law or rule imposing any duty upon the Local Authority regarding the sending of teachers, it seems that a court would be inclined to find the words "sent by the Local Authority" inaccurate and would not interpret them as meaning that some positive act of sending was required from the Local Authority and that in the absence of such positive act the Local Authority was not liable to pay under rule 56-A.

3. There remains the question whether it was necessary for the Local Authority to consent, either expressly or impliedly, to the deputation of teachers. In this case, the Local Authority does not appear to have consented expressly. Neither the Act nor the Rules thereunder appear to have contemplated an express consent on the part of the Local Authority. For periods when the Local Authority has to make budget provision for training teachers consent may be implied from sanction of the budget. But in this case there was no need for

the Local Authority to make budget provision. It appears, however, that the Local Authority had notice that the teachers were being sent for training and put no obstable in the way. It seems that from these facts their consent could be inferred. For a period when no budget provision was necessary, the only duty that lay upon the Local Authority was not to interfere with the executive acts of the Administrative Officer. There is no doubt that the teachers in this case were sent for training with the tacit consent of the Local Board and under ~~this~~ rule 58-A the Local Board is liable for their duty pay from the 1st June 1941 or the date they were sent whichever is the later date.

4. In regard to the action which Government should take to enforce payment, attention is invited to H.L.A's No.3639 dated 29th April 1942 where this matter has already been dealt with. The Local Board should be called upon to make budget provision within a certain period and if they fail to do so, Government may appoint some person to make such provision in the budget by modifying it: Upon such provision being made there would be no difficulty for the Administrative Officer to pay the salaries of those teachers. This action is to be taken under section 127 of the Bombay Local Boards Act, 1923 and not under section 26-A of the Bombay Primary Education Act.

Sd. P. H. Moos,
11/5
Remembrancer of Legal Affairs.

U.R.to E.D.No.3951, dated the 12th May 1942.

MRP.
7/5/56.

Submitted.

The owner of the house adjacent to the school building at Satana belonging to the Local Authority District Local Board, Nasik, claims that he has a right of easement to use the door in the common wall and he uses the door since the last three years. The Mamlatdar of Satana suggests that as the matter pertains to dispute about the right of easement, the local authority Dist. Local Board, Nasik, should seek redress in a Court of law. Before taking any action, the Administrator, Dist. Local Board, Nasik, wishes to know whether the expenditure on account of institution of a civil suit should be debited to the Primary Education Fund or will have to be borne by the Dist. Local Board, Nasik. The E.D. office holds view that the filing of a suit for the preservation of a local authority's right in respect of a school building is a valid purpose under the Bom. Primary Education Act and consequently the expenditure incurred by it should properly be debitable to the Primary Education Fund. The R.L.A. is requested to advise whether the E.D. office view is correct.

2. Under sec.4(2) of the Act, the School Board shall exercise powers and perform duties of the local authority in respect of primary education as may be prescribed. Rule 3(1) of Bom. Primary Education Rules, 1924, provides that a local authority shall maintain an adequate number of primary schools, and rule 7 provides that it shall provide necessary buildings and equipment for

Office of the R.L.A.

Rule 3(1) of the Bombay Primary Education Rules, 1924, provides that a local authority shall maintain an adequate number of primary schools, and rule 7 provides that it shall provide necessary buildings and equipment for schools maintained by it. Under rule 32(1) subject to the provisions of the Act and of the rules, the school board shall be responsible for the management and control of all primary schools maintained by the local authority and of primary schools of such Municipalities as are not local authorities but have transferred their primary schools to the local authority. Rules 7 and 32(1) read together make it clear that it is the duty of the local authority to provide an adequate number of buildings for schools maintained by it, and that the school board shall be responsible for the management and control of all the schools maintained by the local authority. Under section 8A(1) of the Act the Primary Education Fund shall be maintained by the local authority and under section 8B such Fund shall stand in the name of the school board and shall be applied subject to the provisions and for the purposes of the Act. Rule 8 further provides that a local authority shall defray such other charges in respect of primary education as may be necessary for the proper and efficient discharge of its obligatory duties under the Act. Since school buildings are to be provided by the local authority it is its duty to see that the user of the building for primary education is not in any way interfered with by any other person or that no one sets up a right against the property in derogation to the right of the local authority. If any person disputes the title of the local authority to any school building or raises any right which would prejudicially affect the rights of the local authority to the use thereof for educational purposes, it will be open to the local authority under rule 8 to defray such expenditure as may be necessary from the Primary Education Fund for asserting its

rights or clearing its title in respect of the property used as school building.

2. The proposed suit in respect of the school building will have to be instituted by the local board as the local authority and not as the local board. A local board exercising the powers and performing its duties under the Bombay Primary Education Act, 1923 functions not as a local board, but as a local authority for the purposes of the Primary Education Act. It does not appear that this Act can be considered to be an enactment merely supplementary to the Bombay Local Boards Act, 1923 in the sense that the functions carried on by local board as a local authority can be considered to be the functions of a local board under the Local Boards Act (See R.L.A's opinion No.4410, dated 9th August 1934). Consequently the suit expenses will have to be met from the Primary Education Fund and not from the local fund.

Sd. P.N.Moos
15/5
Remembrancer of Legal Affairs.

U.R.to E.D.,No.4082, dated the 16th May 1942.

MRP.
7/5/66.

Office of the R.L.A.

Sub-rule (3) of rule 47 of the Bombay Primary Education Rules, 1924 provides that the local authority shall make prodsion for pension or institute a provident fund for all other orricers, clerks, teachers and menials approved by Government in this behalf. The Director of Public Instructionm proposes in paragraph 2 of his letter at page 5 ante the addition of the following clause (ii) to sub-rule (3)

"In the absence of regulations framed in this behalf by a local authority under sub-section (3) of section 27 the grant of pension and gratuity to the employees referred to in this sub-rule shall be determined in accordance with the rules prescribed from time to time by Government for similar classes of Government employees."

The question for the consideration of the Remembrancer of Legal Affairs is whether the addition of clause (ii) to sub-rule (3) of rule 47 of the Bombay ~~x~~ Primary Education Rules, 1924 as proposed by the Director of Public Instruction would be intra vires the provisions of clause (b) of sub-section (1) of Section 27 of the Bombay Primary Education Act, 1923 in so far as it relates to inferior servants of the School Board.

2. Under clause (d) of sub-section (3) of section 27 of the Bombay Primary Education Act, 1923 the local authority is given power to make rules determining the pay and terms of employment of the teaching, supervising, clerical and inferior staff. Clause (b) of sub-section (1) of section 27 provides for power of Government to make rules regulating the maximum and minimum pay the grant of pension or provision of provident funds, the grant of leave and other conditions of service of, to or for the administrative, teaching, inspecting and supervising staff employed by a local authority. It is apparent from this ~~x~~ provision that the Provincial Government has no power to make rules regulating the grant of pension or provision of provident funds, the grant of leave and other

conditions of service of, to or for the inferior staff. That being so, the proposed addition of clause (ii) to sub-rule (3) of rule 47 would be clearly ultra vires.

3. Rules 46 and 46A of the Bombay Primary Education Rules, 1924 appear for the same reasons to be also ultra vires in so far as they relate to menial staff.

Sd. P.N.Moos
15/6
Remembrancer of Legal Affairs.

U.R.to Education Department, No.4943 dated the 17th June 1942.

MRP.
7/5/56.

Office of the R.L.A.

There is no legal objection to the Local Authorities given recognition to a ~~teacher~~ teacher's change of names and sanctioning the necessary changes in the records. On the other hand it is a power that could well be delegated to the School Board or the Administrative Officer. The matter seems one for administrative arrangement rather than the strict determination of the person best legally entitled to exercise the power.

Sd. P.N.Moos
2/7
Remembrancer of Legal Affairs.

U.R.to E.D.,No.5464, dated the 3rd July 1942.

MRP.
7/5/56.

Office of the R.L.A.

In R.L.A's opinion No.10443, dated 27th November 1940 it was pointed out that the Administrative Officers and officers of the inspecting staff of the school boards taken over by Government under section 25 of the Bombay Primary Education (Amendment) Act, 1938, would be deemed to have retired from the service of the Local Authorities within the meaning of rule 22 of the Model Provident Fund Rules, and they would, therefore, be entitled to receive back their accumulations in the Provident Fund. In the subsequent opinion No.8273, dated 20th September 1941, it was also pointed out that the Local Authorities would not be liable to pay interest on the accumulations of these servants till the date of their retirement from the Government service. Subsequently, however, the Finance Department agreed to the transfer of the accumulations in the Provident Fund of the employees taken over by Government to the General Provident Fund with effect from 1st April 1942 and to the payment of interest on these balances from that date.

2. By Government Resolution, General Department No.7352, dated 7th February 1942 Government directed that the accumulated Provident Fund balances of the Administrative Officers and Supervisors of Local Authorities who have been taken over in Government service from 1st July 1938 as a result of the Bombay Primary Education (Amendment) Act of 1938 and which are now lying with various Local Authorities should be transferred to the Government General Provident Fund with effect from 1st April 1942. With regard to this Government Resolution the Chairman, District School Board, contents that there is no provision in the Provident Fund Rules sanctioned for the employees of the Local Authority for the transfer of their Provident Fund Accumulations to the General Provident Fund, and that in the absence of any such provision the transfer of the Provident Fund accumulations to the General Provident Fund on the strength of the Government Resolution would not be valid.

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3. The question for the R.L.A's consideration is whether the order contained in Government Resolution, General Department No.7352, dated 7th February 1942, directing the Local Authorities to transfer the provident fund balances of Administrative Officers and Supervisors who have been taken over in Government service under section 25 of the Bombay Primary Education (Amendment) Act, 1938, to the Goer ment Provident Fund, is legal and proper.

4. Section 4(1) of the Provident Fund Act, 1925, provides that when under the rules of any Government or Railway Fund the sum standing to the credit of any subscriber of depositor, or the balanced thereof after the making of any deduction authorised by this Act, has become payable, the officer whose duty it is to make the payment shall pay the sum or balance, as the case may be to the subscriber or depositor, or if he is dead pay in the manner prescribed in clauses (a),(b) or (c). The accumulations standing in the Provident Fund established by the local authority to the credit of the Administrative Officers and Supervisors taken over by Government under section 25 of the Bombay Primary Education (Amendment) Act, 1938, would be governed by the rules, framed under rule 47(3) of the Bombay Primary Education Rules, 1924, on the lines of the Model Fund Provident Fund Rules (vide Schedule G to Primary Education Rules). Rule 22 provides that payments shall be made within three months from the date of retirement or death of the subscriber. The payments are to be made by the school Boards which administer the Fund. As pointed out in R.L.A's opinion No.10448, dated 27th November 1940, the Administrative Officers and Supervisors taken over by Government under section 25 of the Bombay Primary Education (Amendme nt) Act, 1938 would be deemed to have retired from the service of the Local Authorities within the meaning of rule 22 of the Model Provident Fund Rules and consequently under that rule read with section 41(1) of the Provident Fund Act, the School Board would be bound to pay

bound to pay the accumulations in the Provident Fund to the subscribers concerned, but not to Government. Rule 22 contemplates that the amount should be claimed by the subscribed concerned. Section 25 of the Bombay Primary Education (Amendment) Act, 1938, does not empower Government to determine the terms and conditions of service of the employees by their former employers viz., the Local Authorities concerned, even after they are taken over in Government service (See R.L.A's No.8273, dated 20th September 1941). Consequently Government has no power to call upon the Local Authorities or the School Boards to transfer the accumulated balances in the Provindent Fund of the Administrative Officers and Supervisors taken over by Government to the Government General Provident Fund nor would the Local Authority be justified in paying the balance of the Provident Fund to Government in violation of rule 22 read with section 4(1) of the Provident Fund Act, 1925. The view taken by the Director of Public Instruction and the Educational Department Office does not appear to be correct.

5. If the local authority refuses to obey such a request it does not seem that Government can legally compel them to accede, however administratively convenient it may be - In that case Government may ask the Administrative Officers and Supervisers to claim payment of the Provident Fund balances along with the interest due thereon and then pay the whole of the amount so received into the Government General Provident Fund. If the Local Authority's only anxiety is that it should not incur any liability by unauthorisedly transferring the balances to Government, it would safeguard its interests by taking the consent of the Administrative Officers and Supervisers concerned to the transfer.

Sd. P.N.Moos,
21/7
Remembrancer of Legal Affairs.

MRP.
7/5/56.

U.R.to E.D.,No.5974, dated the 22nd July 1942.

Submitted.

The question for the R.L.A's consideration is whether sub-rule (3) of rule 47 of the Bombay Primary Education Rules, 1924, is ultra vires provisions of the Bombay Primary Education Act, 1923.

2. Rule 47(3) of the Bombay Primary Education Rules, 1924, provides that the Local Authority shall make provision for pension on institution of provident fund for all other officers, clerks, teachers and menials according to the rules approved by Government in that behalf. This rule is framed by the Provincial Government in pursuance of the power conferred in that behalf by section 27(1)(b) of the Bombay Primary Education Act, 1923. Under clause (d) of sub-section (3) of section 27 of the Bombay Primary Education Act, 1923, the local authority may make regulations determining the pay and terms of employment of the teaching, supervising, clerical and inferior staff. Clause (b) of sub-section (1) of section 27 provides for the power of Government to make rules regulating the maximum and minimum pay, the grant of pension and provision of provident fund, the grant of leave and other conditions of service of, to or for the administrative, teaching, inspecting and supervising staff employed by a local authority. From the provisions of sub-section (1)(b) and (3)(d) of section 27 read together it is apparent that the Provincial Government has no power to make rules under sub-section 1(b) of section 27 regulating the grant of pension or provision of

provident fundsxxx to or for the inferior staff (vide R.L.A's No.4943 dated the 17th June 1942). To that extent, therefore, rule 47(3) of the Bombay Primary Education Rules, 1924, appears to be ultra vires. Moreover, under sub-section (3) discretion is vested in the local authority to make regulations in respect of the matters specified in clauses(a) to (f), and consequently a rule making it obligatory upon the Local Authority to make provisions for pension or institute provident fund for the inferior staff, would appear to be inconsistent with sections 27(3)(d) of the Act.

Sd. D.P.Bhangara
30/7.

HRP.
8/5/56.

Office of the R.L.A.

It is true that rule 47(3) of the Bombay Primary Education Rules, 1924, is mandatory. But the rule is made under section 27(1)(b) of the Bombay Primary Education Act, 1923, and is ultra vires in so far as it relates to menials. The fact that a rule is couched in mandatory language would not make it any more valid so far as the question fovires is concerned. It does not seem possible without amendment of the Act to compel local authorities to have a provident fund or a pensions scheme for menials.

Sd. P.N.Moos
15/8/42.
Remembrancer of Legal Affairs.

U.R.to E.D.,No.6699 dated the 18th August 1942.

MRP.
8/8/56.

Submitted.

The facts appear to be as follows:

From the letter of the Chairman, Municipal School Board, Dhulia, No.354 dated 18-7-42, it appears that Mrs. Sushilabai Ranade is the President of the Dhulia Borough Municipality and a member of the Municipal School Board. It appears that she attended the meeting of the School Board on 26-1-1942 and thereafter remained absent from the meetings held on 11th and 27th February 1942. She also remained absent from the meeting convened on 28th March 1942, and on that day she wrote a letter to the Chairman, School Board, asking for one month's leave with effect from 28th March 1942. Meeting of 28th March 1942 was adjourned to 10th April 1942 and it being an adjourned meeting no new subject was placed on the agenda (vide p.17 ante) The said application of Mrs. Ranade was therefore placed before the meeting of the School Board held on 26th April 1942, but as the that meeting was adjourned unanimously upto 25th May 1942, the question of sanctioning leave could not be considered by the School Board. The question of sanctioning the leave was taken up on 25th May 1942, but as before that date Mrs. Ranade had already incurred disqualification under section 3C(1)(a) of the Bombay Primary Education Act, 1923, the School Board decided as follows:

"As Mrs. Sushilabai Ranade was absent from the meeting of the School Board continuously for 3 months from 11-2-1942 without obtaining the previous permission of

of the School Board her membership of the School Board is already cancelled. The Chairman has declared her as disabled from continuing to be so and informed her and the President of the Municipal Borough about it by a letter dated 22-5-1942. Consideration of leave today could not make, previous permission, as required by law, available to the member and hence any consideration regarding leave today will be out of order."

As Mrs.Ranade has been declared as disabled from continuing to be a member of the School Board under section 30(1)(a) of the Bom. Primary Education Act, 1923, she has now raised the question for the decision of Govt. under section 30(2) of the Act.

2. On the above facts, the question for R.L.A's consideration is whether it is open to Govt.. to declare that Mrs.Ranade's seat is not vacant.

3. Clause (a) of sub-section (1) of section 30 of the Bombay Primary Education Act, 1923, provides that if any member of a School Board, during the term of for which he has been elected or appointed absents himself during three successive months from the meetings of the School Board without the previous permission of the Board, he shall be disabled from continuing to be a member of such Board, and his seat shall be deemed to be vacant. In the case under consideration, Mrs. Ranade absented herself from the meetings of the School Board held on 11-2-42, 27-2-42/28-2-42 and on 28-2-42 she applied for one month's leave with effect from 28-3-42. It is thus evident that she remained absent from meetings of the School Board without the

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8/5/56.

of the School Board her membership of the School Board is already cancelled. The Chairman has declared her as disabled from continuing to be so and informed her and the President of the Municipal Borough about it by a letter dated 22-5-1942. Consideration of leave today could not make, previous permission, as required by law, available to the member and hence any consideration regarding leave today will be out of order."

As Mrs.Ranade has been declared as disabled from continuing to be a member of the School Board under section 3C(1)(a) of the Bom. Primary Education Act, 1923, she has now raised the question for the decision of Govt. under section 3C(2) of the Act.

2. On the above facts, the question for R.L.A's consideration is whether it is open to Govt., to declare that Mrs.Ranade's seat is not vacant.

3. Clause (a) of sub-section (1) of section 3C of the Bombay Primary Education Act, 1923, provides that if any member of a School Board, during the term of for which he has been elected or appointed absents himself during three successive months from the meetings of the School Board without the previous permission of the Board, he shall be disabled from continuing to be a member of such Board, and his seat shall be deemed to be vacant. In the case under consideration, Mrs. Ranade absented herself from the meetings of the School Board held on 11-2-42, 27-2-42/28-2-42 and on 28-2-42 she applied for one month's leave with effect from 28-3-42. It is thus evident that she remained absent from meetings of the School Board without the

Previous permission obtained from the Board. The period of three months' absence is to be reckoned from the date of the first meeting which the member fails to attend (vide p.14 of Crew on meetings) . In this case, therefore, the perisf of absence commenced to run with effect from 11-2-42, and though Mrs. Ranade applied for one month's leave (which period expired on 27-4-42) she failed to attend the meetings of the School Board till 25-5-42 by which time the three months period had already expired. The Chairman or the School Board was not bound to dispose of her application within a particular time. The only absence permitted by sec.3C(1)(a) is absence with leave previously obtained. The mere fact that Mrs. Ranade sent in an application for leave affords no condonation of the absence. (Cf. R.L.A's opinion No.0.Munis-Cities 17/29 dated 10-5-29). Where a councillor has absented himself without obtaining leave of the Municipality within that period (and not merely applying for leave) his seat becomes vacant and leave cannot be granted retrospectively after the period has expired, as in the present case. (vide R.L.A's No.39 M d/- 26-5-1918 followed in R.L.A's No.1585 d/- 20-2-1942.) As Mrs. Ranade has been disabled from continuing to be a member of the School Board under section 3C(1)(a) her seat has become vacant and the decision of Govt. on this question will be final (vide sec.3C(2)). The view of the Secy. G.D. is correct.

Sd. B.P.Bhangara

2/9.

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8/5/56.

Office of the R.L.A.

The view taken by the Secretary, General Department, in his note at page 23 ante is correct.

Sd. P.M.M.
Remembrancer of Legal Affairs.

W.R.to G.D.,No7439 dated the 17th September 1942.

MRP.
8/6/56.

Office of the R.L.A.

It appears that the te m of office of the Malegaon Municipality was to expire on 31st March 1942. In the meantime Government by G.R., G.D.,No,4718/33, dated the 26th March 1942 directed the dissolution of the Municipality with effect from 1st April 1942 and its reconstitution with effect from 1st October 1942. Thereafter Government constituted a new school board for the Malegaon Municipality for the period ending 30th September 1942. The question for the consideration of the Remembrancer of Legal Affairs is whether the consitution of the new school board is lawful.

2. Since the life of the old school board of the Malegaon Municipality was co-extensive with that of the Municipality and since the life of the Municipality expired on 31st March 1942 (see section 3(5) of the Bombay Primary Education Act, 1923), the life of the old school Board also expired on 31/3/42. The members of that school board would, however, continue in office until the members of a new school board are elected or appointed as the case may be without their position being in any way affected by the dissolution of the Municipality (see the provisos to section 3(5) of the Act). This means that the old school board could continue in office until a new school board is constituted by the new Municipality which is to come into office on 1st October 1942 as provided by the order of dissolution fated 26th March 1942. Sub-section (6) of section 3 empowers Government to constitute a new school board if the term of office of the old school board expires during the period of supersession of the local authority and not for its dissolution. There is a distinction between dissolution and supersession of a local authority, for in the case of the former immediate steps have to be taken for its re-establishment, whereas in the case of the latter more time that ordinarily required for election must necessarily pass before a new local authority is constituted (see section

section 219 of the Bombay Mâicipal Boroughs Act, 1925 and sections 130 and 131 of the Bombay Local Boards Act, 1923). It is for this reason that the Bombay Primary Education Act contains no provision for constituting a new school board during the period of dissolution of a local authority. Consequently the action taken by Government in constituting a new school board for the Malegaon Municipality during the period of its dissolution is not warranted by any provision of the Bombay Primary Education Act. It appears that the new school board has already assumed office. If so, some ~~xx~~ steps will have to be taken to validate its acts. No reply need be given to Mr.Deshpande.

Sd. P.N.Moos
23/11
Remembrancer of Legal Affairs.

U.R.to E.D.,No.7698 dated the 23rd September 1942.

MRP.
8-5-56.

Office of the R.L.A.

According to the order of the President, Ahmedabad Municipality, the School Board by its resolution No.620 dated 17-8-42 resolved to close all Municipal Schools with effect from 12th August 1942 till further orders. By another resolution No.624 dated 29th August 1942, the School Board of Ahmedabad Municipality resolved that in view of the abnormal circumstances all Municipal Schools should be kept closed till further orders. As the Director of Public Instruction considered that the School Board had exceeded its powers he suspended the execution of the second resolution by his order dated 2nd September 1942 issued section 16C(1) of the Bombay Primary Education Act, 1923. It appears that the Administrative Officer of the Municipal School Board has refused to carry out the orders passed by the Director of Public Instruction with the result that the school still remain closed. On the above facts, the questions for R.L.A.'s consideration are:-

(1) Whether the D.P.I's order under section 16C(1) of the Bombay Primary Education Act suspending the execution of the School Board's resolution dated 29th August 1942 was legally valid and proper; and

(2) Whether the Administrative Officer was justified in obeying the School Board's order after its suspension by the D.P.I. and confirmation by the Board.

Under rule 32(1) of the Bombay Primary Education Rules, 1924, the School Board is responsible for the management and control of all primary schools maintained by the local authority. Such management and control however will have to be consistent with the provisions of the Act and the rules made thereunder. Under rule 74 the power to grant vacations for a period not less than and not more than six weeks in each year and holidays not exceeding 35 days in a year vests in the School Board. Under the proviso thereto

thereto the School Board has no power to exceed those limits except in the case of holidays with the sanction of the D.P.I. In cases of real emergency such as a riot the School Board in virtue of its powers of management and control, would probably have authority to close the schools temporarily without the D.P.I.'s sanction. In the present case, the schools have been closed for more than a month. If such closure is to be reckoned as a vacation or a holiday the Board has exceeded its powers of sanctioning vacations or holidays and the D.P.I's order would therefore be intra vires and could be upheld by Government. However, it is doubtful whether the present closure can be regarded as a vacation or a holiday. The School Board maintains that the closure is necessary for the childrens(protection in the present disturbed conditions. But from the papers it appears that conditions in Ahmedabad, although not quite normal, are not such as to justify the schools remaining closed indefinitely. Further, the present closure cannot be said to have been necessitated by sudden emergency in which there was no time for consulting the D.P.I. Assuming that the Board is right, as perhaps it is, in maintaining that the present closure is neither a holiday nor a vacation, the question would be whether the School Board has any authority to sanction this indefinite closure. There is no section or rule which specifically gives it that power. On the contrary, the prescription of maxima for vacations and holidays implies that is the duty of the School Board to keep the schools open for the remaining days of the year. In areas where compulsory education has been introduced the number of sessions is to be prescribed by the School Board. To close the schools indefinfitely without real justification would be a breach of the Board's implied duty to keep the school open for a certain number of days in a year and a virtural abuse of its powers. In the words of section 16C of the Act, it would be "contrary to the Act" inasmuch as the closure is an act likely to hinder the development of primary education. It was not on these grounds that

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ground that the D.P.I. cancelled the execution of the order. But is open to Government to uphold the order on those grounds. Therefore, whether or not the present closure is to be regarded as a vacation or a holiday, the D.P.I's order would be intra vires of section 16C of the Act and could be upheld by Government.

The Administrative Officer of the School Board of the Ahmedabad Municipality is the servant of the local authority (see sub-section (1) of section 27A); and under sub-section (4) he shall, subject to the general or special orders of the Provincial Government exercise all the powers and perform all the duties which may be exercised or performed by the Administrative Officer appointed under section 9. Rules 41,42 and 43 prescribe the powers and duties of an Administrative Officer; but none of them requires him to obey orders of the D.P.I. in defiance of the orders of the Board and in fact the power to order the opening or closing of schools does not vest in him. Even after the D.P.I. suspended the resolution of the School Board of the Ahmedabad Municipality, closing the schools for an indefinite period, the School Board again reaffirmed its previous resolution. The Administrative Officer, as servant of the local authority, was bound to obey the School Board. In the circumstances the Administrative Officer cannot be held responsible for disobeying the order of the D.P.I. The view taken by the Secretary, E.D. in paragraph 6 of his note at page 48 ante is correct.

Sd. P.N.Moos
18/9
Remembrancer of Legal Affairs.

U.R.to E.D.,No.416-Confl., dated 18th September 1942.

MRP.
8/5/56.

358-Confl
22-9-47.

Submitted.

2. At its meeting held on 22-8-1942, the District School Board, Kaira, passed a resolution for the closure of all the primary schools in the following terms:-

"In view of the conditions prevailing in the District as seen from the reports received from the school teachers in the District and in view of the press reports regarding the loss of innocent lives as a result of lathi charge and firing at various places in the villages in the District and also in view of the Administrative Officer's report, this Board resolves that it is not prepared to take upon itself the responsibility of keeping the schools open and thus endangering the lives of children and, therefore, the period from 26-8-1942 to 15-9-1942 should be observed as Vacation and the Administrative Officer should be authorised to adjust the other holidays accordingly".

This resolution was unanimously passed. As the D.I.O. considered that the District School Board, Kaira, had, by granting in excess of the prescribed period exceeded its power, he suspended the executim of that resolution by his order dated 30-8-1942 issued under section 16C(1) of the Bombay Primary Education Act, 1923, and directed that the schools should be kept open. The Chairman, District School Board, has preferred an appeal to Govt. against the said order of D.P.I. suspending the resolution of the District School Board. The conten-

contentions of the Chairman are these:-

(1) that the School Board has not exceeded its power because the total number of holidays and vacation to be observed during the year as required by rule 74 has not been exceeded in any way;

(2) that the District School Board's action in observing 21 days' holidays in lieu of other holidays is quite in conformity with the Primary Education Rules and the Board has not exceeeded its power in any way.

3. The question for the R.L.A's consideration is whether the contention of the Chairman, District School Board, Kaira, that the D.S.B. has not violated the provisions of rule 74 of the Bombay Primary Education Rules, 1924, is correct.

4. It is no doubt true that under rule 32(1) of the Bombay Primary Education Rules, the S.B. is responsible for the management and control of all primary schools maintained by the local authority, but the words "subject to the provisions of the Act and of these rules" contemplate that such management and control should be consistent with the provision of the Bombay Primary Education Act and the rules made thereunder. Under rule 34(1), subject to the rules and regulations made under section 27(3)(d), the S.B. has power to determine the school hours and the number of and duration of vacations. Rule 74 provides inter alia that the S.B., after consulting the local School Committee, shall fix the number of vacations to be given each year, the period of each and the time at which it shall be given, provided that no vacation shall exceed four weeks in length. It is not clear how many vacations in a year are fixed by the S.B. It is however clear that the primary schools in the District have already enjoyed a summer vacation of 4 weeks and 23 holidays of a

holidays out or a total of 35. In addition to the summer vacation of 4 weeks, the S.B. granted another vacation of 3 weeks by its resolution dated 22-8-1942. The total period of vacations thus far enjoyed by the primary schools of the District comes to seven weeks. Rule 74 gives power to the S.B. to grant vacations for not more than six weeks in a year and to the D.P.I. in excess of six weeks to suit the special conditions of particular localities. In the present case, the D.S.B. has exceeded its powr in granting vacations for a period exceeding six weeks without the sanction of the D.P.I.

5. The argument advanced by the Chairman that the action of the S.B. in granting 21 days vacation in lieu of other holidays is in conformity with Primary Education Rules, appears to be far from convincing. Rule 74 provided distinctly for vacations as separate from holidays, and empowers the S.B. to fix the maximum period in respect of each sort. "Vacation" is all the time between the end of the term and the beginning of another; and "holiday" is defined as a day of religious festival, a day on which the ordinary occupations are suspended, a day of exemption or cessation from work (vide Iyer's Law Lexicon). When separate period is fixed both for the holidays and vacation, it would not be competent for the S.B. to grant one class of holiday for another in order to escape the liability in case of breach of the rule. When the resolution itself speaks of grant of "vacation" the Chairman cannot

regard it as grant of "holidays" to suit his argument, nor can he total up the two as if no distinction exists in Rule 74. The closure of the primary schools in this case is reckoned as "vacation" (see resolution dated 22-3-1942) and the total period of the vacations so far enjoyed by the primary schools is in excess of the maximum period prescribed by the rule. As sanction of the D.P.I. was obtained by the D.S.B. to the grant of 3 weeks' vacation as a result of which the total period of vacations has exceeded the permissible limit of six weeks, the Board has exceeded its powers of sanctioning vacations under rule 74 and consequently the D.P.I(s order would appear to be intra vires of section 16C(1) of the Bombay Primary Education Act.

Sd. B.P.Bhangara
22/9.

MRP.
8/5/56.

regard it as grant of "holidays" to suit his argument, nor can he total up the two as if no distinction exists in Rule 74. The closure of the primary schools in this case is reckoned as "vacation" (see resolution dated 22-3-1942) and the total period of the vacations so far enjoyed by the primary schools is in excess of the maximum period prescribed by the rule. As sanction of the D.P.I. was obtained by the D.S.B. to the grant of 3 weeks' vacation as a result of which the total period of vacations has exceeded the permissible limit of six weeks, the Board has exceeded its powers of sanctioning vacations under rule 74 and consequently the D.P.I(s order would appear to be intra vires of section 16C(1) of the Bombay Primary Education Act.

Sd. E.P.Bhangara
22/9.

MRP.
8/5/56.

Office of the R.L.A.

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The view taken in paragraph 4 of the E.D. note of 17th September 1942 is correct. The D.C.I's order under section 16-C was competent and can be uphold Government.

Sd. P.N.Koos
25/9
Remembrancer of Legal Affairs.

U.R.to E.D.,No.425-Confl., dated 25th September 1942.

MRP.
8/5/56.

Office of the R.L.A.

The amendment of rule 42 of the Bombay Primary Education Rules, 1924, as proposed by the Director of Public Instruction in his letter at p.1 ante would no doubt be intra vires looking to the provisions of section 27(1)(a) of the Bombay Primary Education Act, 1923. But an Administrative Officer appointed by a local authority is the servant of the local authority and removable from office only by the local authority with the previous sanction of Government (see section 27A(1) and (2) of the Act). It is clear that Government has no direct control over the Administrative Officer appointed by a local authority and consequently no action could be taken against him by Government for breach of any order of Director of Public Instruction even if rule 42 is amended as proposed by the Director of Public Instruction. The objections urged in the E.D. note of 1st October 1942 appear cogent on legal as well as administrative grounds. To achieve the desired result an amendment of the Act itself would appear necessary.

Sd. P.N.Moos
5/10
Remembrancer of Legal Affairs

U.R.to E.D.No.436-Confl., dated the 6th October 1942,.

MRP
8/5/56.

Office of the R.L.A.

The question for consideration of the R.L.A. is who should call the first meeting of the Committee of Management appointed under clause (b) of sub-section (2) of section 26C of the Bombay Primary Education Act, 1923.

2. Under clause (b) of sub-section (2) of section 26C of the Bombay Primary Education Act, 1923 all powers and duties of the school board shall during the period of dissolution or supersession be exercised and performed by such persons as the Provincial Government may from time to time a point in this behalf. It is clear from this provision that the Committee of Management appointed thereunder would be entitled to exercise and perform the powers and duties of the superseded or dissolved school board. But the Committee cannot be said to be the School Board (cf. Advocate General's opinion dated 15-7-41). It is therefore unnecessary to insist on the provision of rule 21 of the Bombay Primary Education Rules which provides for convening the first meeting of a school board and the election of a chairman. It is necessary to act in accordance with the general provisions of law regarding corporate meetings. "A corporation can only do corporate acts at a corporate meeting, unless a special method is authorised by the constitution. To be duly constituted ~~xx~~ corporate meeting must be convened by proper authority and must be held upon notice which gives every member of the corporation entitled to attend and opportunity of attending unless it is held on the charter day. But corporate meeting may be valid where notice of it has been given, provided all the members of the corporation are present and consent to the meeting being held." (See Halsbury's Laws of England, Vol.VIII, pages 51,52). There is no provision either in the Bombay Primary Education Act ~~xx~~ or the Rules thereunder prescribing the procedure for convening the meeting of the Committee of Management appointed under clause (b) of sub-section (2) of

of section 26C of the Bombay Primary Education Act It would therefore be competent for all the members of the Committee of Management to meet together on any convenient day. If it is found necessary that some person must arrange to call them on a fixed day at a fixed time, there is no objection to the Administrative Officer, who is the chief executive officer of the school board, or some responsible officer such as the Collector convening the meeting of the members of the Committee of Management; but no such meeting would be valid unless all the members are present and consent to the meeting being held. No such difficulty can however be anticipated since Government generally appoints willing persons. After the members of the Committee of Management meet a temporary chairman who is not a candidate for the chairmanship should be elected merely for the purpose of electing the chairman.

Sd. P.N.Moos
5/19
Remembrancer of Legal Affairs.

U.O.to R.D.,No.3067, dated the 6th October 1942

MRP.
8/5/56.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the members of the Committee of Management appointed under clause (b) of sub-section (2) of section 26C of the Bombay Primary Education Act, 1923, are entitled to exercise the powers of nominating candidates for election on the Provincial Board of Primary Education under rule (3) of Schedule L of the Bombay Primary Education Rules, 1924.

2. Under clause (b) of sub-section (2) of section 26C of the Bombay Primary Education Act, 1923, when a school board is dissolved or superseded all the powers and duties of the school board, shall, during the period of dissolution or supersession be exercised and performed by person as the Provincial Government may from time to time appoint in this behalf. It is clear from this provision that the members of a Committee of Management appointed by Government can during the period of dissolution or supersession, exercise and perform only the powers and duties of the school board but they are not and cannot be held to be the school board or members of the school board (cf. Advocate General's opinion dated 15th July 1941).

3. Section 2A of the Bombay Primary Education Act provides that six members of twelve of the Provincial Board of Primary Education shall be elected by the school boards in the manner prescribed. "Prescribed" means prescribed by rules made by the Provincial Government for the purposes of the Act (vide section 2(11)). Rule 150 of the Bombay Primary Education Rules provides that the election of members of the Board shall be held in accordance with the procedure prescribed in Schedule L appended to the rules. Rule (3) in Schedule L provides that any two members of a school board may nominate as a candidate any person who has attained the age of 21 years and holds the requisite qualifications, by sending to, or delivering at the office of the Returning Officer nomination paper

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in the form prescribed. From items 9 and 11 of the form and the foot-note, it will be clear that the proposer and seconder must be members of the same school board. A school board is a body corporate and when it is superseded its powers and duties can be exercised and performed by the persons appointed by Government under section 26C (2)(b) of the Act. In law, however, the individual corporators of members, of which it is composed are something wholly different from the corporation itself; for a corporation is a legal persona just as much as an individual. (See Halsbury's Laws of England, Volume 8, page 4, ara.4). Under rule (3) of the rules in Schedule L it is a privilege granted to the individual members of the school board to nominate candidates as distinct from the powers and duties exercised and performed by the school board as a corporate body. This right or privilage cank only be exercised by the members of the school board. Since the persons appointed by Government under section 26C(2)(b) are not members of the school board it is doubtful if they are competent to nominate candidates under rule (3) of Schedule L.

4. If, however, two members of the Committee of Management nominate a candidate and the Returning Officer viz. the President of the Provincial Board accepts the nomination paper, it would be a mere irregularity and not an illegality (pp.33-34 of law of Elections by Khanna). There is no appeal against an improper acceptance of a nomination paper and the election would not be invalid unless it is set aside by Government under rule 152; and the orders of Government under that rule would be final.

Sd. P. M. Moos
14/10
Remembrancer of Legal Affairs.

U.R.to E.D., No.8320 dated the 14th October 1942.

MRP.
8/5/56.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether sub-rule (2) of rule 53 of the Bombay Primary Education Rules, 1924, is intra-vires the provisions of clause (b) of sub-section (1) of section 27 of the Bombay Primary Education Act, 1923.

2. This sub-rule prescribes the conditions regulating the new appointments of clerks and the confirmation of the existing clerks. Clause (b) of sub-section (1) of section 27 of the Bombay Primary Education Act, 1923, provides for power of Government to make rules regulating the maximum and minimum pay, the grant of pension or provision of provident fund, the grant of leave and other conditions of service of, to or for the administrative, teaching, inspecting or supervising staff employed by a local authority. Clause 4 (d) of sub-section (3) of section 27 of the said Act likewise provides for power of the local authority to make with the sanction of the Provincial Government regulations determining the pay and terms of employment of the teaching, supervising, clerical and inferior staff and regulating the administration and management of the primary schools. It would thus appear that unless the expression "administrative staff" in clause (b) of sub-section (1) of section 27 includes the clerical staff sub-rule (2) of rule 53 would not be intra vires.

3. The expression used in clause (a) of sub-section (1) of section 27 of the Primary Education Act, 1923, is "Administrative Officer" while that used in clause (b) of the same sub-section is "administrative staff". The distinction in the phraseology leads to the inference that the Legislature could not have intended to use two expressions synonymously. It is not at all clear what is meant by the "administrative staff". But prima facie it would appear to be wide enough to include its clerical establishment. This presumption receives some support from the wording of rule 112(a) which provides that the

that the recurring annual expenditure on which the grant is calculated shall include the cost of the necessary permanent and temporary administrative, supervising inspecting and teaching staff including clerks and menials. It may be observed that in rule 46 no specific mentioned k is made of the clerical staff which presumably was meant to be included in the administrative, teaching, inspecting and supervising staff for which provision is made concerning joining time, pay, officiating pay and travelling and other allowances.

4. The question is however not free from difficulty. In his endorsemtn dated 6th ~~Sept~~ October 1942 the D.P.I. remarks as follows:-

"The word 'administrative' was ~~as~~ inserted in section 27(1)(b) in accordance with the suggestion contained in this office letter No.S-99/402-D dated 23rd December 1937, because Government then had under consideration the questin of taking over the power of prescribing the pay and conditions of service etc. of the Administrative Officer. Strictly speaking, therefore, it would appear that the 'administrative staff' referred to in section 27(1)(b) includes only the Administrative Officer. It is possible that some of the large local authorities may have to employ Personal Assistants to their Administrative Officers and such officers when appointed will have to be included in the 'administrative staff' contemplated in section 27(1)(b). If the D.P.I's interpretation of the expression "administrative staff" is to be accepted, clause (b) of sub-section (1) of section 27 and the Bombay Primary Education Rules will have to be suitably amended.

Sd. P.N.Moos
15/10
Remembrancer of Legal Affairs.

U.R2to R.D..No.8390. dated the 16th October 1942.

MRP.
8/8/56.

Office of the R.L.A.

It is suggested that the liability of the local authority to reimburse to Government the cost of the leave salary drawn by Mr.Gatne arises by virtue of para. 4 of clause (2) of G.R. E.D. No.6872, dated 2nd October 1940. That Resolution however was not made in consultation with the local authorities, nor in a manner to comply with the statutory requirements in that behalf; consequently it does not constitute an enforceable contract. The question then arises whether it can be said to be a statutory order made in exercise of the power of Government under section 25 of the Bombay Primary Education (Amendment) Act, 1939. That section provides inter alia that notwithstanding any law or terms of any contract, all school board Administrative Officers employed by local authorities to which the powpr of a pointing Administrative Officers is not delegated under section 27A of the Bombay Primary Education Act, 1923, and who may be in office on the day on which this Act comes into force shall, from such date, be deemed to be a pointed an Administrative Officers on such terms and conditions as may be determined by the Provincial Government. The terms and conditions which Government is empowred to determine under the section are obviously those which define the powers and duties and the rights and liabilities of the Administrative Office on one hand and Government on the other (vide R.L.A's opinion No.8273 dated 20-9-1941 followed in R.L.A's opinion No.5974 dated 22-7-1942). The section does not empower Government to make an order whereby any duty or liability would be cast upon the local authority. Para.4 of clause (2) of the G.R. in question which purports to do so does not therefore appear to be intra vires of Government under section 25 and has no statutory force.

Consequently --

Consequently Government has no legal right to recover the cost of the leave salary from the local authority.

Sd. P.N.Moos
31/10
Remembrancer of Legal Affairs.

U.O.to D.D.,No.8854, dated the 31st October 1952.

MRP.
8/5/56.

Office of the R.L.A.

It appears that both the Chairman and Vice-Chairman of the District School Board, Ahmedabad, have since last August been placed under detention under Defence of India Rules. The Administrative Officer called a meeting of the school board on 24th October 1942 but none attended it. Consequently there was no meeting of the school board in October and this constituted a breach of rule 26 of the Primary Education Rules, 1924. The questions raised for the consideration of the R.L.A. are:-

(1) Whether the meeting was validly called by the Administrative Officer on 24th October 1942; if so ,

(2) Whether the school board can be superseded under section 26-C of the Bombay Primary Education Act, 1923.

2. "A corporation can do corporate acts at a corporate meeting unless a special method is authorised by the constitution. To be duly constituted a corporate meeting must be convened by a proper authority and must be held upon notice which gives every member of the corporation entitled to attend an opportunity of attending unless it is held on a charter day." (See Halsbury's Laws of England, Vol. 8, page 52). A school board constituted under the Bombay Primary Education Act is a body corporate (see 34 B.L.R., page 1500) and consequently the statutory provisions and rules and regulations in respect of convening meetings of the board must be strictly observed. "Usually no call or notice is necessary in the case of a regular meeting which is to take place on a specified day as every member is presumed to be duly acquainted with the same" (see Aiyangar's Municipal Corporations in British India, page 138).

3. Rule 26 of the Bombay Primary Education Rules, 1924, inter alia provides that the school board shall meet together not less than once in every month for the transaction of ordinary business. Under rule 27 power is given to the

to the school board to make regulations not inconsistent with the Act or the rules framed thereunder in respect of the length of notice to be given for calling meetings, the number of members to constitute a quorum etc. Regulation I of the Regulations framed by the District School Board, Ahmedabad, provides that the ordinary meeting of the School Board shall meet at least once a month to carry on the general business and a notice of clear 7 days shall have to be given for such an ordinary meeting. Regulation 2 lays down that the Chairman of the School Board shall fix the day and time for the meeting and the Administrative Officer shall prepare a notice calling the meeting and shall send to all members such a notice along with list of business to be transacted in the meeting. Regulation 57 provides that every meeting to be held in a month shall be held on the last Tuesday of that month and if necessary the Chairman or in his absence Vice-Chairman shall call the supplementary meeting on any day of the month. Reading these provisions together it will be clear that the School Board, Ahmedabad, can meet on the last Tuesday of every month without a notice of meeting to members; but a notice would be essential if it is to meet on any other day, which day can be fixed only by the Chairman or Vice-Chairman. In the present case the Administrative Officer called the meeting on 24th October 1942. That day not being the last Tuesday of October, regulation 57 could not apply and the day of the meeting not being fixed by the Chairman or Vice-Chairman the Administrative Officer could validly call the meeting. Consequently the reply to the first question is in the negative.

4. In view of the reply to the first question the second question does not survive. It may however be stated that the Administrative Officer may send to every member the list of business to be transacted on the last Tuesday of the next month and

and in case the members necessary to constitute a quorum for the meeting under regulation 6 fail to attend the meeting there would be no legal objection to taking action under section 26C.

Sd. P. N. Moos
2/12
Remembrancer of Legal Affairs.

U.R.to E.D.,No. 524 Confl., dated the 3rd December 1942.

MRP.
9/5/56.

Submitted.

By its resolution No.134 dated the 9th July 1942, the District School Board, East Khandesh, appointed a Sub-Committee to control the staff in the office of the District School Board and to prepare a statement showing the proper distribution of work to be allotted to each clerk in the office. On 10th August 1942, the Educational Inspector, C.D., pointed out to the Chairman, District School Board, that under the Bombay Primary Education Rules, the Administrative Officer was competent to control the staff and that the constitution of a sub-committee was ultra vires. The matter was again considered by the School Board its resolution No.196 dated the 13th September 1942 in which it maintained that the constitutions of the sub-committee was not ultra vires but that under rule 4(2) it was competent for the School Board to control the staff. The Chairman informed the Education Inspector accordingly on 18th September 1942.

2. On the above facts, the question raised for the consideration of the R.L.A. is whether a School Board is legally competent to appoint a Sub-committee for control the staff of the office of the District School Boards and for distribution of work among the office staff.

3. Under section 5 of the Bombay Primary Education Act, 1923, the School Board may, from time to time, delegate <u>any of its powers and duties</u> to any sub-committee or member or honorary or stipendiary officer of the Board; such committee, a member or officer shall conform to any instructions that may from time to time

be

be given by the School Board; the Board may at any time discontinue or alter the constitution of any sub-committee so formed or withdraw any of the powers or duties so delegated (see also rule 40). Under sub-section (1) of section 4, the School Board shall exercise and perform such powers and duties as may be enacted in/or prescribed under this Act. ~~In~~ Under sub-section (2), the School Board shall exercise the powers and perform the duties of the local authority in respect of primary education as may be prescribed in this behalf etc. The word "prescribed" means prescribed by rules made by the Provincial Government for the purposes of the Act (vide section 2(11)). Under section 4, therefore, the School Board will be competent to exercise and perform such powers and duties as may be enacted in the Act or specified in the rules made by Government under section 27 (1) of the Act. The powers and duties to be exercised and performed by the local authority, the School Board and the Administrative Officer have been specified in the Bombay Primary Education Rules, 1924. The powers and duties exercisable and performed by the local authority are mentioned in rules 3 to 11, those of the Chairman and Vice-Chairman in rules 23 and 24, those of the School Board in rules 32 to 40A and 44(1), and those of the Administrative Officer in rules 41 to 43. It will be evident that separate authorities have separate powers. Under rule 4(2) all officers, teachers, clerks and inferior servants employed by a local authority shall be under the control of, and subject to the orders of, the School Board, <u>except in so far as the powers of the School Board have been limited by the Act or by those rules.</u> The words underlined place a limitation on the powers of the School Board. If any power is specifically

MEP: 9/5/56

specifically conferred upon any authority other than the School Boad, to that extent the powers of the School will be limited. Under clause (a) of sub-rule (1) of rule 41, the Administrative Officer has the power to supervise and control the educational staff of the local authority. "Supervise" means to superintend; to inspect with authority (Black's Law Dictionary p.1681). "Superintend" means to have charge and direction of: to regulate with authority: to take care of with authority (Ibid p.1680). It means to direct the course and details of some work: to manage (p.1238 of Law Lexicon). The word "control" means to check, to regulate, to hold in restraint, to rule and direct: to exercise a directing, restraining or governing influence over; to subject to authority; to have under command and authority over; to have authority over a particular matter (p.342 of Law Lexicon by Iyer). The words "supervise and control" clearly convey that the educational staff is under the charge and direction of the Administrative Officer and the Administrative Officer can exercise his influence over them and regulate the affairs of the educational staff. If the Educational staff includes the clerks in the office of the School Board they will be under the control and direction of the Administrative Officer. As the power to Supervise and control the educational staff does not vest in the School Board, it cannot delegate such power under section 5 to any Sub-committee. The resolution of the School Board dated the 9th July 1942 appointing a sub-committee to control the office staff appears to be ultra vires and it appears

appears that the Director of Public Instruction can ~~b~~ suspend the resolution under section 16C of this Act, it being contrary to the provisions of section 5 of the Act and read with rule ~~42~~ 41(1)(a) of the Bombay Primary Education Rules.

Sd. E.P.Bhamgara
14/10

I agree. Reply may be:-

Papers are seen and returned.

The views taken by E.D. is correct.

U.R.to E.D. No.10099, dated 18-12-42.

Id. R.T.K.
6/12.

U.R.to E.D.No.10099,dated 18-12-42.

MRP.
9/5/56.

Submitted.

For facts of the case attention is invited to letter from the President, Provincial Board of Primary Education No.294 dated the 25th/26th November 1942 and to the letter from the Chairman, District School Board, Bijapur, No.1513 dated the 6th October 1942. The facts relevant to the case are as follows:-

The fresh elections of the Provincial Board of Primary Education for the triennium commencing from 23rd January 1943 were notified on 23rd July 1942. The election programme was as shown below:-

(1) Receipt of nomination papers.	The papers should reach the Secretary of the Board by 5 p.m. on the 9th Sept.1942.
(2) Scrutiny of nomination papers.	11th September 1942 (12 noon).
(3) Counting of votes	26th October 1942.

A list of valid nominations for the different seats was sent by registered post by the Returning Officer to the School Boards concerned on 11th September 1942 with a request to hold the elections as required by rule 10 of the rules in Schedule L to the P.E. Rules and to report the result within the prescribed time. The District School Board, Bijapur, received the list of valid nominations on 15th September 1942. As a meeting of the Board had already been called on 17th September 1942 the Chairman included the item of election on the agenda of the meeting fixed for the 17th September 1942 as the last item for consideration. The

meeting

meeting of the 17th September 1942 was however, adjourned to 18th September 1942 after considering certain items and the question regarding election was considered in the adjourned meeting . This meeting passed a resolution in favour of Mr. Mankani. The Chairman despatched the requisite voting paper on 24th September 1942 and the same was received in the office of the Provincial Board of Primary Education on 28th September 1942. On the 27th September 1942, however, the Chairman received a requisition from more than half the total number (viz 16) of members of the Board that the resolution regarding election passed on the 18th September 1942 was illegal and void as the item was included in the supplementary agenda and proper notice of the subject was not given to all the members and that a special meeting of the Board should therefore be ~~x~~ called to consider the question. The Chairman thereupon decided to call a special meeting of the Board on 6th October 1942 and requested the President of the Provincial Board of Primary Education in his letter of 28th September 1942 to supply him with a fresh nomination papers, and to keep in abeyance the voting paper sent to him on 24-9-42. A fresh nomination paperx was accordingly sent to him by the President of the Provincial Board of Primary Education on 29th September 1942.

The Special meeting called by the Chairman was convened on 6th October 1942 and the Board voted in favour of Basawanal and cancelled the previous resolution passed in favour of Mr. Mankani. The President of the

Provincial Board of Primary Education who is the Returning Office has accepted the second vote as valid and ~~xx~~ declared Prof. Basawanal as having been duly elected. Mr. Mankani has now made an appeal to Government against the decision of the Returning Officer under ~~xx~~ rule 152 in Schedule L to the P.E. Rules.

2. On the above facts, the question for consideration of the R.L.A. is whether the election of Prof. Bhasawanal on the Provincial Board of Primary Education can be held to be legally valid.

3. Resulation 11 of the Regulations framed by the District School Board, Bijapur, under rule 27 of the Bombay Primary Education Rules, 1924, provides as under:-

"Except with the permission of the Presiding authority, which permission shall not be given in the case of a motion or proposition to modify or cancel any resolution within three months after the passing thereof, no business shall be transacted and no proposition shall be discussed at any monthly meeting unless it has been entered in the notice convening such meeting or in the case of a special meeting in the written request for such meeting etc."

It appears that as the first voting paper in connection with the election of a member on the Provincial Board of Primary Education was received by the School Board on 15th September 1942, it was not possible to include this item on the agenda for the meeting held on 17th September 1942.

But-

But on finishing the business contained in the original agenda, it appears that the subject of election of a member on the Provincial Board of Primary Education was taken up by the District School Board and as this matter was not disposed of on 17th September 1942 the meeting was adjourned to 18th September 1942 on which date the subject was taken up and the election was recorded in the voting paper and the same was dispatched on 24th September 1942 to the Returning Officer as required by rule (10(1)) of the Rules under Schedule L of P.E. Rules. From the Chairman's own statement it is evident that he allowed the item in connection with the election to be included in the business of the day and thus acquiesced in the demand of other members for recording the vote. This action of the Chairman, D.S.B. in allowing the item regarding election to be taken up at the meeting held on 17th September 1942 falls within the ambit of regulation 11. "A corporation aggregate with a head being one body, the head as such can do nothing without the concurrence of the body, for he is only a part of the entire corporation (vide para. 58 of Halsbury's Laws of England Vol.8 pp.37-38)." The act of the head and a majority of members is the act of the corporation, and will be good though the others do not agree." (para.93 at p.55 ibid). "Electors present at an election and bastaining from voting thereat are deemed to acquiesce in the election made by those who vote" (p.63 Ibid). Consequently the resolution passed by the D.S.B. at the meeting held on 18th September 1942

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recording its vote in favour of Mr. Mankani was a legally valid resolution. The Chairman dispatched the requisite voting paper on 24th September 1942 which was received by the Returning Officer on 28th September 1942 when once the vote or ballot paper has been submitted it cannot be withdrawn or cancelled. Passing of another resolution by the same body viz. the D.S.B. Bijapur on 6th October 1942, electing Prof. Basawanal may now be deemed to be a "tendered vote" submitted by the D.S.B. Bijapur. "If a person representing himself to be a particular elector named in the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall be entitled to mark a ballot paperm in the same manner as any other elector ...." This will not be placed in the ballot box, but will be entered with the name and electoral number of the elector by the presiding officer and set aside in a separate packet. Such tendered ballot papers will not be counted by the Returning Officer but at scrutiny by election Commissioners, the two votes under the one electoral number would be examined. The personating vote could be rejected etc." (vide 51-52 of Khana's Law of Election). In the present case, the first vote recorded in favour of Mr.Mankani in pursuance of resolution dated the 18th September 1942 cannot be said to be a personating vote. A tendered vote can only be added to the count on a scrutiny upon proof that the person who gave the tendered vote has been personated. The resolution of the D.S.B. dated the 6th October 1942 seeks to make a grievance on the resolution passed on 18th September 1942 giving

giving its vote in favour of Mr. Mankani on the ground that the resolution was illegal. But as pointed out above the resolution is valid under regulation 11. The Returning Officer acts merely in the ministerial xxx capacity, and he cannot allow the voting paper once tendered to be withdrawn or the effect of the same to be negatived. This is not a case of a tendered vote." It is not established that the first resolution of the xxxx D.S.B. dated the 18th September 1942 was illegal, or that it was not competent to pass such resolution. The second vote in favour of Prof. Basawanal cannot now be acted upon by the Returning Officer as a valid vote after once the D.S.B. has exercised its right of election and passed resolution on 13th September 1942. It appears that the view in the E.D. office note is correct and under rule 152 of Bom. xxxx P.E.Rules Government may issue an order declaring Mr. Mankani as elected and xxx the order of the Returning Officer may be set aside.

Sd. E.P.Bhamgara
22/12.

MRP.
9/5/56.

Office of the R.L.A.

The views expressed in the E.D. note dated the 18th December 1942 are correct. The vote recorded in favour of Mr.Mankani must be deemed to be valid for the purpose of the election.

Sd. P.N.Moos

29/12
Remembrancer of Legal Affairs.

U.R.to E.D.,No.571-Confl.,dated the 29th December ~~xx~~ 1942.

MRP.
9/5/56.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether sub-rule (2) of rule 53 of the Bombay Primary Education Rules, 1924, is intra vires the provisions of cl.(b) of sub-sec.(1) of sec.27 of the Bombay Primary Education Act, 1923.

2. This sub-rule prescribes the conditions regulating the new appointments of clerks and the confirmation of the existing clerks. Clause (b) of sub-section (1) of sec.27 of the Bombay Primary Education Act, 1923, provides for power of Government to make rules regulating the maximum and minimum ~~fundpay~~, the grant of pension or provision of provident fund, the grant of leave and other conditions of service of, to or for the administrative teaching, inspecting or supervising staff employed by a local authority. Clause (~~x~~ d) of sub-sec.(3) of sec.27 of the said Act likewise provides for power of the local authority to make with the sanction of the Provincial Government regulations determining the pay and terms of employment of the teaching, supervising, clerical and inferior staff and regulating the administration and management of the primary schools. It would thus appear that unless the expression "administrative staff" in cl.(b) of sub-sec.(2) of sec.27 includes the clerical staff sub-rule (2) of rule 53 would not be intra vires.

3. The expression used in cl.(a) of sub.(1) of sec.27 of the Primary Education Act, 1923, is "Administrative Officers" ~~xxxx~~ while that used in cl.(b) of the same sub-section is "administrative staff". The distinction in the phraseology leads to the inference that the Legislature could not have intended to use the two expressions synonymously. It is not at all clear what is meant by the "administrative staff". But prima facie it would appear to be wide enough to include its clerical establishment. This presumption receives some support

from

from the wording of rule 112(a) which provides that the recurring annual expenditure on which the grant is calculated shall include the cost of the necessary permanent and temporary administrative, supervising, inspecting and teaching staff including clerks and menials. It may be observed that in rule 46 no specific mention is made of the clerical staff which presumably was meant to be included in the administrative, teaching, inspecting and supervising staff for which provision is made concerning joining time, pay, officiating pay and travelling and other allowances.

4. The question is however not free from difficulty. In his endorsement dated 6th October 1942 the D.P.I. remarks as follows:-

"The word 'administrative' as inserted in section 27(1)(b) in accordance with the suggestion contained in this office letter No.S-99/402-D dated 23rd December 1937 because Government then had under consideration the question of taking over the power of prescribing the pay and conditions of service etc. of the Administrative Officer. Strictly speaking, therefore, it would appear that the 'administrative staff' referred to in sec.27(1)(b) includes only the Administrative Officer. It is possible that some of the large local authorities may have to employ Personal Asistants to their Administrative Officers and such officers when appointed will have to be included in the 'administrative staff' contemplated in section 27(1)(b)". If the D.P.I.'s interpretation of the expression "administrative staff" is to be accepted, clause (b) of sub-section (1) of section 27 and the Bombay Primary Education Rules will have to be suitably amended.

Remembrancer of Legal Affairs.

U.R.to E.D.,No.8390,dated the 16th October 1942.

O.Prim.Educ.Bom./42.